

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

TIFFANY H.

Claimant,

vs.

FRANK D. LANTERMAN REGIONAL  
CENTER,

Service Agency.

OAH No. L 2006060176

**DECISION**

Sandra L. Hitt, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on September 8, 2006 and September 29, 2006, at Los Angeles, California.

Linda Simmons, Attorney at Law, represented Claimant, Tiffany H.,<sup>1</sup> (hereinafter referred to as Claimant).

Pat Huth, Attorney at Law, represented Frank D. Lanterman Regional Center (Service Agency).

The parties agreed to the admission of each other's documentary evidence. The parties agreed to submit closing briefs in lieu of oral argument. Both parties timely submitted closing briefs. Claimant's brief was marked as Exhibit I for identification and Service Agency's brief was marked as Exhibit 11 for identification. Oral and documentary evidence having been received and the matter having been submitted on October 23, 2006, the ALJ issues the following Decision.

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<sup>1</sup> Claimant's last name, and that of her mother, will be represented by initials herein, to protect the privacy of the minor and her family. On at least one of the hearing dates, Claimant was under age 18, and virtually all of the evidence deals with the time period when Claimant was still a minor.

## **ISSUE**

Whether Claimant is eligible for Regional Center services on the basis of autism or a disabling condition closely related to mental retardation or that requires treatment similar to mental retardation.

## **FINDINGS OF FACT**

1. At the time of the first session of the hearing, Claimant was almost 18 years of age. She was under the protection of the Department of Children's Services (DCFS) and the Dependency Court. Claimant turned 18 years of age between the first and second sessions of the hearing. Claimant has been in placement with DCFS since age 5½. Claimant was originally placed in a small family home, but she lived there only about one month due to her behavior. She was then placed at McLaren Hall, where she remained for approximately three years. Claimant was next placed at the Five Acres Facility where she lived for approximately five years until she "aged" out. On February 20, 2001, she was placed at the Hillside Facility, where she remains. Now that she is 18, Claimant is no longer eligible for DCFS services, once transition planning is complete. Claimant is not capable of living on her own. As a result, one of the areas looked at by DCFS and the Dependency Court was Claimant's eligibility for Regional Center services. On May 4, 2005, the Frank D. Lanterman Regional Center denied Claimant's request for eligibility. This hearing ensued.

2. Regional Center vendor psychologists are trained to evaluate for autism when a child does not develop spoken language before the age of 18 months. Claimant did not develop spoken words until 21 months of age. According to Claimant's aunt, Dorothy Cissna, she could not get Claimant to babble as an infant. Claimant did not talk much as a young child, and seemed unable to verbally express her needs. Ms. Cissna recommended speech therapy. Claimant's mother, Francine H., took Claimant to the La Habra Speech and Language Rehabilitation Associates (La Habra). At the age of 21 months, Claimant's overall language ability, auditory comprehension and verbal ability were rated at 16 ½ months; at 36 months of age, Claimant's overall language ability was rated at 33 ¾ months, her auditory comprehension was rated at 40 ½ months, and her verbal ability was rated at 27 months.<sup>2</sup> Ms. Cissna noticed improvement in Claimant's speech after Claimant received speech therapy. Claimant repeated kindergarten. Claimant was finally referred to DCFS by a teacher, who noticed that Claimant was withdrawn, and did not talk much. The teacher suspected abuse. Two of Claimant's siblings had been sexually abused by their father.

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<sup>2</sup> Although the results of Claimant's test at La Habra are referred to in the report of Dr. Robert J. Rome (Exhibit F), no copies of documents from La Habra were offered into evidence at hearing.

3. In 1997, when Claimant resided at Five Acres, Dr. Ted Evans diagnosed her with Pervasive Developmental Disorder, NOS, with notations of: “rule out Attention Deficit Disorder, childhood sexual abuse, and Expressive Language Disorder.” On May 18, 2000, psychologist Douglas Allen, Ph.D., evaluated Claimant. Dr. Allen reviewed Dr. Evans’ 1997 report and found that his evaluation was consistent with Dr. Evans: Expressive Language Disorder, Post-Traumatic Stress Disorder, Attention Deficit Hyperactivity Disorder (ADHD), and Neglect of Child.<sup>3</sup> Claimant has been under the direct care of a psychiatrist and/or psychologist since she was 5½ years old. At no time did any of those individuals diagnose her with Autism. However, Dr. Robert J. Rome, Claimant’s expert witness at the hearing, did arrive at a diagnosis of autism for Claimant on July 21, 2006. In arriving at his diagnosis, Dr. Rome gave Claimant a battery of tests, including the Autism Diagnostic Observations Schedule (ADOS). He also had an Autism Diagnostic Interview with Ms. Cissna, relative to Claimant’s early childhood development. In addition to autism, Dr. Rome diagnosed Claimant with Generalized Anxiety Disorder, and noted that she has Borderline Intellectual Functioning. Dr. Rome, who has previously been a consulting psychologist for the North Los Angeles Regional Center, also opined that Claimant is eligible for services from the Regional Center on the basis of having a condition similar to mental retardation, or requiring treatment similar to that given to persons with mental retardation.

4. Timothy Collister, Ph.D., the Regional Center’s expert witness, did not speak with Ms. Cissna prior to arriving at his evaluation, nor did he administer the ADOS to Claimant. Dr. Collister stated that he did not administer ADOS to Claimant because her symptoms were much more serious than would be accounted for by Asperger’s Disorder or Autism. He performed an extensive psychological examination and believes Claimant’s difficulties are much better explained by a diagnosis of Bi-Polar Disorder, Dysthymic Disorder (a form of chronic depression), Attention Deficit Hyperactivity Disorder (ADHD), and possibly Borderline Personality tendencies (which cannot be properly diagnosed until age 18). Dr. Collister noted that Claimant has severe visual-spatial problems which could be a function of subcortical system deficits. Dr. Collister opined that administering the ADOS test to Claimant would “muddy the waters” more than help. No evidence was adduced at hearing to preclude a dual diagnosis of developmental disorder and emotional disturbance.

5. On May 20, 2002, when Claimant was residing at Hillsides, Jamie Bowns, MSW, and Jean Williams, Ph.D. (intake specialist for Hillsides), issued a report stating that Claimant “continues to demonstrate symptoms of Asperger’s Disorder.” Hillsides asked Dr. Collister to evaluate Claimant. In his report of June 5, 2002, Dr. Collister noted that Claimant’s social worker (Jamie Bowns) and others reported that Claimant engaged in perseveration, repetitive cursing and tantrums, was unable to generate age appropriate relationships, had difficulty picking up social cues from peers, and engaged in self-destructive behavior, such as scratching herself or pricking herself with earrings. Ms. Bowns also noted that Claimant engaged in delusional

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<sup>3</sup> Dr. Collister referred to the reports by Dr. Allen and Dr. Evans in his testimony; however, these reports were not offered into evidence at hearing. Nor were early school records. There was no evidence regarding Claimant’s early childhood development other than the testimony of Ms. Cissna and Dr. Rome’s references to Claimant’s speech therapy at La Habra.

thinking, telling people she had a baby over Spring break, and claiming to have had sex with boys that she has had no contact with. Claimant is obsessed with sex, and masturbates in the public areas of her group residence. Dr. Collister noted in his report that Claimant generally avoids eye contact, although she did engage in eye contact with him during his examination of her, after he established a rapport. Dr. Collister also noted that Claimant was an excellent mimic. Claimant has been treated with various psychotropic drugs, with varying degrees of success.

6. In 2005, psychiatrist Dr. Eliot Moon diagnosed Claimant with Asperger's Disorder, as well as Generalized Anxiety Disorder, and other emotional issues. Although Asperger's is part of the Autism spectrum, the diagnoses of Asperger's Disorder and Autism are mutually exclusive.

7. Claimant did not attend special education classes until approximately 2000. Prior to that time she had attended public elementary school. At the time Claimant "aged out" of Five Acres, she was deemed eligible for special education at Hillsides residential school under a diagnosis of emotional disturbance. Subsequently, Claimant attended St. Phillip The Apostle Middle School, a non-public school, but was suspended for refusing to follow instructions, cursing her teachers and peers, and leaving the school campus without permission. This behavior was attributed to Claimant's emotional disturbance. It was determined that Claimant's behavior limited her ability to function in the public school environment. In 2005, Claimant was admitted into the Pasadena Unified School District's Special Education Program with a diagnosis of emotional disturbance. Her 2005 Individualized Education Plan (IEP) indicates that although Claimant "may be able to achieve success in a general education classroom, her psychotic thoughts and behaviors make a return to a general education campus not in her best interest at this time." Although Claimant is now 18 years old, she is in the ninth grade of school. One would typically expect an 18 year old to be a senior in high school (twelfth grade) or a freshman in college. Dr. Collister assessed Claimant's full scale IQ at 76, in the borderline range. Claimant is reading at a fifth grade equivalent, spelling at an eighth grade equivalent, and has arithmetic skills of a sixth grade equivalent.

8. Claimant currently attends school in a highly structured special education non-public school setting at Hillsides. Although this is a very restrictive and supportive setting, Claimant still did not meet her writing, vocational, and other goals on her most recent IEP. Two of Claimant's siblings have also attended special education classes, and one of her siblings is a Regional Center client. Ms. Cissna thinks that at least one of the siblings has a diagnosis of mental retardation, but this could not be confirmed at the hearing.

9. Claimant is not economically self-sufficient, has difficulty with expressive language, exercises poor self direction and self control (in the past she has run away when upset, and sometimes has left Hillsides at night on foot, walking without a destination). She is naïve, trusting and over-friendly, and places herself in danger. She needs prompts to bathe and groom herself, has difficulty with social relationships, and has failed to make age appropriate social relationships. She has difficulty with social reciprocity and prefers small groups to larger gatherings.

## DISCUSSION AND CONCLUSIONS OF LAW

1. In an eligibility determination matter, the burden lies with the claimant to prove, by a preponderance of the evidence, that he or she is eligible for Regional Center services. Claimant has not met her burden in this regard.

2. The Lanterman Developmental Disabilities Services Act (Lanterman Act) is a comprehensive statutory scheme designed to provide supports and services for persons with developmental disabilities.<sup>4</sup> The Act has a two-fold purpose: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community; and (2) to enable developmentally disabled persons to approximate the pattern of living of non-disabled persons of the same age and to lead more independent and productive lives in the community. (Welf. & Inst. Code, §§ 4501, 4509, 4685, 4750 & 4751; see generally *Association for Retarded Persons v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.) The Department of Developmental Services (DDS) is the state agency required to implement the Lanterman Act. It carries out that responsibility by delivering its services through the various Regional Centers located statewide.

[T]he Legislature has fashioned a system in which both state agencies and private entities have functions. Broadly, DDS, a state agency, “has jurisdiction over the execution of the laws relating to the care, custody, and treatment of developmentally disabled persons” (§4416), while “Regional Centers,” operated by private nonprofit community agencies under contract with DDS, are charged with providing developmentally disabled persons with “access to the facilities and services best suited to them throughout their lifetime” (§4620). (*Association of Retarded Persons, supra*, at p. 389.)

3. In order for Claimant to be eligible for Regional Center Services under the Lanterman Act, she must present with a “developmental disability” and have a “substantial disability.”

4. Section 4512 of the California Welfare and Institutions Code defines a developmental disability as:

a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are (1) solely psychiatric

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<sup>4</sup> The Lanterman Act is codified at Welfare and Institutions Code section 4500 et seq.

disorders. . . (2) solely learning disabilities. . . (3) solely physical in nature.

Conditions closely related to mental retardation or requiring treatment similar to that required by mentally retarded individuals is also referred to as the “Fifth Category.”

5. Section 4512, subdivision (l) of the Welfare and Institutions Code provides in pertinent part:

“Substantial disability” means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

- (1) Self Care
- (2) Receptive and expressive language
- (3) Learning
- (4) Mobility
- (5) Self-direction
- (6) Capacity for independent living
- (7) Economic self-sufficiency.

6. Claimant was diagnosed with a Pervasive Developmental Disability (NOS) as early as 1997 (Finding 3). She has a substantial disability. Currently, at age 18, she is incapable of living independently, is not economically self-sufficient, and has difficulty with self-direction, learning, self-care and expressive language (Findings 1, 7 and 9).

7. Dr. Rome relied upon the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV), in giving his expert opinion. According to the DSM IV, a diagnosis of autism requires the presence or existence of at least six of the following symptoms, with at least two from the first category and one each from the second and third categories.

- (1) qualitative impairment in social interaction, as manifested by at least two of the following:
  - (a) marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction.
  - (b) failure to develop peer relationships appropriate to developmental level.
  - (c) a lack of spontaneous seeking to share enjoyment of, interests, or achievements with other people (e.g. by a lack of showing, bringing, or pointing out objects of interest)
  - (d) lack of social or emotional reciprocity

- (2) qualitative impairments in communication as manifested by at least one of the following:
  - (a) delay in, or total lack of, the development of spoken language (not accompanied by an attempt to converse through alternative modes of communication such as gesture or mime)
  - (b) in individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others
  - (c) stereotyped and repetitive use of language or idiosyncratic language
  - (d) lack of varied, spontaneous make-believe play or social imitative play appropriate to the developmental level.
- (3) restricted repetitive and stereotyped patterns of behavior, interest, and activities, as manifested by at least one of the following:
  - (a) encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus.
  - (b) apparently inflexible adherence to specific, nonfunctional routines or rituals
  - (c) stereotyped and repetitive motor mannerisms (e.g. hand or finger flapping or twisting, or complex whole-body movements)
  - (d) persistent preoccupation with parts or objects.

DSM-IV at pp. 70, 71

8. Although Claimant presents with many symptoms of autism, she was never diagnosed with autism by any of the psychiatrists or psychologists under whose direct care she has been since she was placed in care with DCFS almost 13 years ago (Finding 3). However, in 2002, Dr. Jean Williams noted that Claimant “continues to demonstrate symptoms of Asperger’s Disorder, and, in 2005, Dr. Eliot Moon diagnosed Claimant with Asperger’s Disorder (Finding 5). The diagnoses of Asperger’s and Autism are mutually exclusive (Finding 5).

Claimant has failed to develop peer relationships appropriate to her age, and she generally avoids eye contact (Findings 5 and 8). However, it was not demonstrated, by a preponderance of the evidence, that Claimant had marked impairment in the use of *multiple* non-verbal behaviors, such as facial expression, body postures and gestures to regulate social interaction, that she lacks spontaneous seeking to share enjoyment of interests or achievements with other people, or that she lacks social or emotional reciprocity (although she does have difficulty in the area of social reciprocity and prefers small groups to larger gatherings (Finding 9). Claimant engages in repetitive use of language (cursing), she experienced a delay in spoken language, and she engages in perseverations (Finding 3). Although Claimant has offered evidence that could support a diagnosis of autism, she has not made a sufficiently strong case to meet her burden of proof on this issue. Therefore, Claimant is not eligible for Regional Center services on the basis of autism at this time.

9. The ALJ takes official notice of the DSM-IV definition of Mental Retardation at p. 39:

The essential feature of Mental Retardation is significantly subaverage general intellectual functioning that is accompanied by significant limitations in adaptive function in at least two of the following areas: communication, self care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.

10. Claimant's general intellectual functioning is borderline (Finding 6). Although she is in ninth grade, 18 year old Claimant is substantially academically delayed (Finding 7). Despite many years in placement, Claimant still does not have a complete diagnosis.<sup>5</sup> Prior to the hearing, Dr. Collister had not previously given Claimant a diagnosis of Bi-Polar Disorder; however, when presented with the issue at hearing, he agreed that Bi-Polar Disorder might better explain some of Claimant's symptoms (Finding 4). Claimant has been treated with various psychotropic drugs, with varying degrees of success (Finding 5).

Both Dr. Collister and Dr. Rome gave erudite presentations at hearing. Not surprisingly, Dr. Rome, whose recent work has been largely in the area of developmental disability, and Dr. Collister, who has more experience in the area of neuropsychology and the treatment of emotionally disturbed children and adults, came to different conclusions regarding Claimant. Dr. Collister's conclusion that Claimant's problems are too severe to be explained by a diagnosis of Autism or Asperger's Disorder was persuasive. It is unlikely that any one diagnosis would account for all of Claimant's problems, and in fact, she has received multiple diagnoses in the past (Findings 3, 4, and 6). From the evidence adduced at hearing, Claimant's condition is best described as a dual-diagnosis: a Pervasive Developmental Disorder (Finding 3), and emotional disturbance (Findings 4 and 7).

Like individuals with mental retardation, Claimant can only function in highly structured, sheltered environments (Findings 1, 7, and 8). Claimant currently attends school in a highly structured special education non-public school setting at Hillsides. Although this is a very restrictive and supportive setting, Claimant still did not meet her writing, vocational, and other goals on her most recent IEP (Finding 8). In order to function in the community, Claimant needs a significant amount of support, including prompting, supervision, and repetitive instructions (Findings 5, 7, 8 and 9). These needs are similar to those of an individual with mental retardation. However, the only required treatment identified by Claimant that would be similar to that required by mentally retarded individuals is "repetitive instruction." This showing is insufficient, especially in light of the fact that Claimant was progressing in a general education program until she was expelled from St. Phillip's for behavior attributed to emotional disturbance. Claimant has not met her burden to show that she has a condition closely related to

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<sup>5</sup> As indicated above, a better diagnosis for Claimant may be borderline personality disorder; however, this diagnosis could not previously be made because Claimant had not yet reached 18 years of age.



mental retardation or that she would benefit from treatment similar to that required by mentally retarded individuals. Therefore, Claimant is not eligible for Regional Center services on the basis of a "Fifth Category" determination at this time.

### **ORDER**

WHEREFORE, THE FOLLOWING ORDER is hereby made: The appeal of Claimant Tiffany H. from the Service Agency's determination that she is ineligible for Regional Center services is hereby DENIED.

Date: November 3, 2006

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SANDRA L. HITT  
Administrative Law Judge  
Office of Administrative Hearings

### **NOTICE**

**This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**